

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Mr. NASIR MAHMOOD,)	FILED: JUNE 25, 2008
)	
Plaintiff)	08CV3617
)	JUDGE LEFKOW
v.)	MAGISTRATE JUDGE NOLAN
)	
)	No: _____
MICHAEL B. MUKASEY, Attorney)	PH
General of the United States;)	
ROBERT MUELLER, Director,)	
Federal Bureau of Investigation;)	
MICHAEL CHERTOFF, Secretary of)	
Department of MICHAEL AYLES,)	
Acting Director,)	Naturalization Application
U.S.Citizenship and Immigration Services;)	under 8 U.S.C. § 1447(b)
RUTH A. DOROCHOFF, District)	
Director, Department of Homeland)	
Security Chicago District)	
)	
Defendants.)	
_____)	

INTRODUCTION

1. Plaintiff is a lawful permanent resident of the United States who is statutorily eligible to naturalize and become a United States citizen. Plaintiff's application for naturalization has been unlawfully delayed by defendants. As a consequence, this Court has jurisdiction to adjudicate Plaintiff's naturalization application and to grant him citizenship pursuant to 8 U.S.C. § 1447(b).

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this case pursuant to 8 U.S.C. § 1447(b) (jurisdiction over naturalization applications), 28 U.S.C. § 1331

(federal question jurisdiction), 28 U.S.C. § 2201 (declaratory judgment) and 5 U.S.C. § 701 (Administrative Procedures Act).

3. Venue is proper in this action pursuant to 28 U.S.C. § 1391(e) and 8 U.S.C. § 1447(b) because Plaintiff resides within the district of this court, Defendants maintain their offices in this district and the USCIS Office in this district is adjudicating Plaintiff's Application for Naturalization.

PARTIES

4. Plaintiff has resided in the United States as a lawful permanent resident since 1999. His claim to naturalization arises under 8 U.S.C. § 1447(b).

5. MICHAEL B. MUKASEY is the Attorney General of the United States, and is sued in his official capacity. Under the direction of the Attorney General, the Department of Justice is the agency of the United States government that has authority to conduct background checks and security checks for individuals who are applying for naturalization.

6. MICHAEL CHERTOFF is the Secretary of the Department of Homeland Security ("DHS"). As of March 1, 2003, DHS is the agency responsible for implementing the Immigration and Nationality Act. Within DHS, the United States Citizenship and Immigration Services is responsible for implementing the provisions under which lawful permanent residents can be naturalized and become United States citizens. *See, e.g.*, 8 U.S.C. § 1421, 8 C.F.R. § 310, and 8 C.F.R. § 316.3. Mr. Chertoff is sued in his official capacity.

7. MICHAEL AYTES is the Acting Director of the U.S. Citizenship and Immigration Services ("USCIS"), a component of the DHS, which is responsible for the

administration of immigration and naturalization adjudication functions and establishing immigration services policies and priorities. Mr. Aytes is sued in his official capacity.

8. ROBERT MUELLER is the Director of the Federal Bureau of Investigation, a component of the Department of Justice, and is sued in his official capacity. The FBI has responsibility to complete certain name checks, security checks and other background checks for USCIS and other federal agencies.

9. RUTH A. DOROCHOFF is the District Director of the Chicago District of the U.S. Citizenship and Immigration Services of the Department of Homeland Security. Ms. Dorochoff has been delegated authority to adjudicate applications for naturalization within the Chicago District. Ms. Dorochoff is sued in her official capacity.

FACTS

10. Plaintiff is a native and citizen of Pakistan. He was born on April 4, 1981.

11. On or about October 17, 2005, Plaintiff filed his application for naturalization with the U.S. Citizenship and Immigration Services. On March 15, 2006, Plaintiff was interviewed and examined on his naturalization application at the Chicago District Office of the USCIS.

12. At the examination, Plaintiff passed the tests of English and U.S. history and government as required under 8 U.S.C. § 1423. Nevertheless, he was told by the examining officer that a decision could not yet be made on his application due to a pending FBI background check.

13. Plaintiff's Application for Naturalization, filed on October 17, 2005, has remained pending despite numerous inquiries to defendants about the status of his application. The U.S. Citizenship and Immigration Services has indicated that it will not

adjudicate Plaintiff's application for naturalization until the background checks have been completed.

14. Many more than 120 days have passed since the examination, and Defendants have made no decision on Plaintiff's application in violation of 8 U.S.C. § 1447(b).

15. Plaintiff is eligible for naturalization, meets all the requirements for naturalization, and would have been approved for naturalization if the USCIS had properly followed and implemented the statute.

CLAIMS FOR RELIEF

16. Defendants' failure to make a determination on Plaintiff's application within the 120-day statutory period entitles Plaintiff to bring this matter before this Court for a hearing pursuant to 8 U.S.C. § 1447(b).

17. Plaintiff seeks a de novo judicial determination of his naturalization application and a grant of naturalization from this Court. In the alternative, Plaintiff seeks that the Court remand the application to USCIS with an order that it immediately adjudicate his application.

WHEREFORE, Plaintiff requests that the Court:

- A. Grant this petition and enter a judgment granting Plaintiff's naturalization and ordering that he is a naturalized citizen of the United States;
- B. In the alternative, remand the application to USCIS with an order that it adjudicate the application within 15 days of said order;

- C. Grant attorney's fees and costs under the Equal Access to Justice Act. 28 U.S.C. § 2412(d) & 5 U.S.C. § 504 et seq., and/or other appropriate authority;
- D. Grant such other and further relief as may be appropriate.

RESPECTFULLY SUBMITTED this 25th day of June, 2008,
Nasir Mahmood

By: /s/ John Shine
JOHN SHINE
Attorney for Plaintiff

John Shine
Minsky, McCormick and Hallagan, P.C.
The Clark Adams Building
210 S. Clark Street, Suite 2025
Chicago, IL 60604
T: (312) 427-6163
F: (312) 427-6513

CERTIFICATE OF SERVICE

I hereby certify that on this June 25, 2008, a copy of the attached Petition for a Hearing on Naturalization Application under 8 U.S.C. § 1447(b) was served upon the Defendants by depositing them in the U.S. mail, to be sent certified mail, addressed to:

Michael B. Mukasey
Attorney General of the United States
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Robert Mueller
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, D.C. 20535-0001

Michael Chertoff
Office of the General Counsel
U.S. Department of Homeland Security
Washington, DC 20528

Michael Aytes, Acting Director
U.S. Citizenship and Immigration Services
425 Eye Street, NW
Washington DC 20536

Ruth A. Dorochoff, District Director,
U.S. Citizenship and Immigration Services
Chicago District Office
101 West Congress Parkway
Chicago, IL 60605

I hereby certify that on this June 25, 2008, a copy of the attached Petition for a Hearing on Naturalization Application under 8 U.S.C. § 1447(b) was served via hand delivery upon:

Sheila M. McNulty
Special Assistant United States Attorney
219 S. Dearborn Street, 5th Floor
Chicago, IL 60604

/s/ John Shine

JOHN SHINE

Minsky, McCormick and Hallagan, P.C.
The Clark Adams Building
210 S. Clark St. Suite 2025
Chicago, IL 60604

**INDEX OF DOCUMENTS IN SUPPORT OF PETITION FOR A
HEARING ON NATURALIZATION APPLICATION**

1. Initial Interview Notice, Form N-400, Application for Naturalization, showing application "received date" of October 17, 2005 and interview date of March 15, 2006.
2. Naturalization Interview Results, Form N-651, showing that plaintiff passed the Naturalization tests of English and U.S. history and government.
3. Inquiry by Paula Bemonte, Member of Congress, IL 3rd District, sent via e-mail, to the USCIS, to expedite the processing of the plaintiff's Application for Naturalization.
4. Response from USCIS regarding Plaintiff's inquiry, stating that the background investigation still had not been completed.

EXHIBIT 1



Request for Applicant to Appear for Naturalization Initial Interview			NOTICE DATE December 23, 2005
CASE TYPE N400 Application For Naturalization			INS A# A 046 976 488
APPLICATION NUMBER 1 IN*000832493	RECEIVED DATE October 17, 2005	PRIORITY DATE October 17, 2005	PAGE 1 of 1

APPLICANT NAME AND MAILING ADDRESS
NASIR MAHMOOD
2F
6058 S MASSASOFT AVE
CHICAGO IL 60638

|||||

Please come to:
CHICAGO CUSA OFFICE
536 S. CLARK-- 3RD FLOOR
CITIZENSHIP OFFICE
FIRST FLOOR
CHICAGO IL 60605

On (Date): Wednesday, March 15, 2006
At (Time): 07:45 AM

You are hereby notified to appear for an interview on your Application for Naturalization at the date, time, and place indicated above. **Waiting room capacity is limited. Please do not arrive any earlier than 30 minutes before your scheduled appointment time.** The proceeding will take about two hours. If for any reason you cannot keep this appointment, return this letter immediately to the INS office address listed below with your explanation and a request for a new appointment; otherwise, no further action will be taken on your application.

If you are applying for citizenship for yourself, you will be tested on your knowledge of the government and history of the United States. You will also be tested on reading, writing, and speaking English, unless on the day you filed your application, you have been living in the United States for a total of at least 20 years as a lawful permanent resident and are over 50 years old, or you have been living in the United States for a total of 15 years as a lawful permanent resident and are over 55 years old, or unless you have a medically determinable disability (you must have filed form N648 Medical Certification for Disability Exception, with your N400 Application for Naturalization).

You MUST BRING the following with you to the interview:

- This letter.
- Your Alien Registration Card (green card).
- Any evidence of Selective Service Registration.
- Your passport and/or any other documents you used in connection with any entries into the United States.
- Those items noted below which are applicable to you:

If applying for NATURALIZATION AS THE SPOUSE of a United States Citizen;

- Your marriage certificate.
- Proof of death or divorce for each prior marriage of yourself or spouse.
- Your spouse's birth or naturalization certificate or certificate of citizenship.

If applying for NATURALIZATION as a member of the United States Armed Forces;

- Your discharge certificate, or form DD 214.

If copies of a document were submitted as evidence with your N400 application, the originals of those documents should be brought to the interview.

PLEASE keep this appointment, even if you do not have all the items indicated above.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

INS Office Address:
US IMMIGRATION AND NATURALIZATION SERVICE
CITIZENSHIP OFFICE
539 SOUTH LA SALLE
CHICAGO IL 60605-

INS Customer Service Number:
(800) 375-5283

APPLICANT COPY

EXHIBIT 2

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 046 976 488

On 3/15/2009, you were interviewed by USCIS officer Jordan

- ☒ You passed the tests of English and U.S. history and government.
- ☐ You passed the tests of U.S. history and government and the English language requirement was waived.
- ☐ USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.
- ☐ You will be given another opportunity to be tested on your ability to _____ speak/_____ read/_____ write _____ English.
- ☐ You will be given another opportunity to be tested on your knowledge of U.S. history and government.
- ☐ Please follow the instructions on Form N-14.
- ☐ USCIS will send you a written decision about your application.
- ☐ You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) _____ Congratulations! Your application has been recommended for approval. At this time it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) _____ A decision cannot yet be made about your application.

It is very important that you:

- ☒ Notify USCIS if you change your address
- ☒ Come to any scheduled interview.
- ☒ Submit all requested documents.
- ☒ Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.
- ☒ Go to any Oath Ceremony that you are scheduled to attend.
- ☒ Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS had not made a determination on your application within 120 days of the date of your examination.

EXHIBIT 3

Belmonte, Paula

From: Belmonte, Paula
Sent: Tuesday, December 05, 2006 10:33 AM
To: 'CHI-Congressional'
Subject: A 46 976 488 / Nasir Mahmood / N 400 Expedite

Hello,

A 46 976 488
Nasir Mahmood
6058 S. Massasoit Ave. / #2F / Chicago / IL / 60638
DOB / 04-04-1981

N 400 interview = 03-15-2006 / passed test waiting for oath ceremony / applicant is requesting an expedite due to he has an opportunity to work in Switzerland for two years / he is an engineer for HUBER + SUHNER documentation can be provided to support his request.

All considerations given to this request are truly appreciated.

Thank you,

Paula Belmonte
Daniel Lipinski
Member of Congress
IL 3rd District

Authorization release on file

12/5/2006

EXHIBIT 4

U.S. Citizenship
and Immigration
Services

Dear Applicant:

Although we have completed the interview on your application we cannot make a decision on your case because the required security checks are incomplete. Once the background investigation is completed we will make and inform you of our decision as quickly as possible.

We understand that you may be frustrated by this news. However, in order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. Consequently, we have adopted enhanced security check procedures.

Given the significance of immigration benefits and the number of applications submitted, it is inevitable that some applications will require more attention than others. Some factors that may lead to delays are the volume of record checks, the number of records to be checked and the processing of common names. For the vast majority of applicants, USCIS is able to quickly determine whether there is any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before a decision can be made on the case. However, a match does not always lead to a denial of the application. USCIS does not share information regarding the specific nature of the match or the nature or status of any investigation with applicants or their representatives.

We remain committed to processing cases within a reasonable period of time. In some cases, however, unresolved security concerns will create delays. We ask for your patience in such cases, and in return we promise to continue to seek resolution as quickly as possible in each individual case.

Sincerely,

A handwritten signature in black ink that reads "Gerard Heinauer".

Gerard Heinauer
Acting District Director